

# **Minutes of the Waukesha County Shoreland Zoning Advisory Committee**

**Thursday, April 28, 2016 (Waukesha County Administration Center)**

## **Committee Members Present**

Tim Barbeau	Town of Delafield Planner and Engineer
Thomas Day	Lake Management District Representative, Waukesha Co. Board of Adjustment
Bill Groskopf	Builder (Groskopf Construction/MBA)
Marilyn Haroldson	Town of Merton Planner
Jeff Herrmann	Town of Genesee & Oconomowoc Planner
Kyle Kohlmann	Landscape Architect (Seasonal Services)
Don Reinbold	North Lake Management District
Sandy Scherer	Town of Ottawa Planner, Waukesha County PLU
Paul Schultz	Architect (Sunarc Studios)
Jim Siepmann	Developer (Siepmann Realty/MBA), Waukesha Co. Park and Planning Comm.
Tom Slawski	Chief Biologist (SEWRPC)
Tony Zanon	Engineer (Jahnke & Jahnke)

## **Committee Members Unable to Attend**

Bob Peregrine	Town of Oconomowoc Plan Comm., Waukesha Co. Park & Planning Commission
Kathryn McNelly-Bell	Env. Consultant (Kapur & Assoc.), T/Mukwonago Plan Comm., Spring Brook Dist.
Tim Schwecke	Town of Mukwonago & Eagle Planner
Dave Zimmerman	Waukesha County Board, County Rep. of four Lake Management Districts

## **Staff Present**

Jason Fruth	Waukesha County PLU (SZAC Chair)
Amy Barrows	Waukesha County PLU (Lead Staff)
Kim Haines	Waukesha County Corporation Counsel
Jason Wilke	Waukesha County PLU (Sr. Landscape Architect)
Rebekah Baum	Waukesha County PLU
Andrea Hedemann	Waukesha County PLU
Kayla Reithmeyer	Waukesha County PLU

## **Agenda overview**

Mr. Fruth and Ms. Barrows welcomed two special guests attending the meeting in honor of National Take Your Child to Work Day. Ms. Elizabeth Barrows and Ms. Allison Barrows introduced themselves to the committee.

### **1. Review of March 10, 2016 meeting minutes**

There were no comments regarding the minutes.

Mr. Fruth briefly summarized the minutes and the decisions made by the committee at the prior SZAC meeting. He noted that the committee recommended replacing the existing floor area ratio/open space system with a maximum building footprint scheme. The recommended maximum building footprint was set at 17.5% for residential districts. He also explained that the SZAC had selected preferred alternatives for regulating building height:

- Maximum height (lowest exposure to highest peak) for structures within 75' of the shore or for structures located on lots of 65' or less in width = 35'.
- Maximum height for structure 75' or more from OHWM and for lots greater than 65' wide:
  - 42' maximum height (from lowest exposure to peak).

- 32' to highest eave (from lowest exposure)

Mr. Fruth explained that the committee had concurred with the proposal to employ a mitigation handbook. He noted that the committee would continue discussion of proposed rules for improvements to non-conforming structures and would then consider the list of twenty or so other NR 115 and miscellaneous zoning topics to round out the day's agenda.

## 2. **Clarification on matters considered at previous meetings**

- Definition of impervious surface (retaining walls and roads)

Ms. Barrows noted that Mr. Zanon had raised a question at a previous meeting about how retaining walls should be handled relative to impervious surface (IS) calculations. She explained that Staff is proposing that walls be included in IS calculations (exclude compacted soil or stone behind wall). The committee expressed a preference for the lineal length of walls to be multiplied by one foot to arrive at the square footage of a wall. Committee members discussed that rock outcroppings and other unconventional walls may not neatly fit the confines of the proposed calculation method but the committee felt that such wall variations may be more subtle when viewed in the landscape.

- Designation of additional highly developed shorelines

Mr. Fruth explained that the SZAC had expressed a preference for Staff to analyze all areas outside of urban census tracts that might also qualify as Highly Developed Shorelines pursuant to the below described State criteria (shoreline must be 500' in length):

- A majority of the lots within the area are developed with more than 30% impervious surface.
- A majority of the lots within the area are less than 20,000 square feet in area.
- The area is located on a lake and is served by a municipal sewerage system.

He noted that Staff had analyzed all shorelines that had potential to qualify and that Staff conducted detailed lot size and IS analysis for fourteen water bodies. He stated that seven of the fourteen shorelines examined qualified (see list below). He explained how each of the seven qualified by referencing maps that displayed parcel size and IS percentages. He also explained that designation as "Highly Developed" would afford properties the same, more lenient IS thresholds that properties within urban census tracts would be subject to.

Mr. Herrmann asked whether the analysis by Staff had considered the pending Assessor's plat for Monterey in analyzing the Monterey Mill Pond and surroundings. Mr. Fruth responded that Staff would re-examine the Monterey area against the proposed plat boundaries and make adjustments, as necessary.

- Beaver Lake (south side- Village limits east to Monclaire Rd.)
- Eagle Spring Lake (southerly extent of Tuohy Rd.)
- Monterey Mill Pond (both sides of Mill St.) Staff will re-evaluate based upon pending Assessor's Plat.
- North Lake (all Town shore frontage on lake from Oconomowoc River to Chenequa boundary)

- Okauchee Lake (Road N and surroundings to bring entire lake into Highly Developed designation)
- Pretty Lake (entire shoreline)
- School Section Lake (properties along Lake Dr.)

The committee recommended that all seven areas be advanced as Highly Developed Shorelines.

- Minor clarification of height for principal structures on non-conforming lots

Ms. Barrows explained that Staff recommends a clarification to apply the more stringent 35' principal building height standard to lots less than 65' in width rather than lots equal to or less than 65'. The committee agreed.

**3. Discuss modifications to proposed nonconforming structure and mitigation provisions (continued from Meeting #3)**

Ms. Barrows explained that there were concerns offered about a few of the proposed non-conforming structure relief provisions at the last meeting and that Staff had gone back and attempted to address those issues. She explained that the proposed changes to the non-conforming "tiered" system are marked in red font and strike-through (see non-conforming structure meeting handout). She noted that, in response to SZAC input, allowing replacement structures by right was removed from the most severely non-conforming wetland & floodplain and road setback sections and that Staff was proposing that this provision instead be inserted into the more moderately non-conforming ranges.

Ms. Barrows then described that language was added to the "offset" section for structures located between 5' and 10' from a lot line to limit improvement of such a structure to 50% of the building footprint area over the lifetime of the structure (with a special exception). She also described that the revised language would allow expansions to structures more than ten feet from a lot line via the special exception process. The committee debated whether such expansions (10' or more from a lot line) could be permitted administratively and ultimately concluded to require a special exception only for those expansions that would exceed 50% of the building footprint.

She also noted that, as discussed previously, language has been added to allow for Staff to administratively authorize a building envelope of no more than 1,100 square feet when offsets and setbacks would not otherwise provide such an envelope. She noted that Staff would have the administrative authority to modify road, floodplain and wetland setbacks only.

Mr. Schultz asked whether non-conforming (floodplain setback) structures that are more than 35' from the floodplain that are eligible for replacement can also be expanded vertically? Ms. Barrows answered, yes, and indicated that the language would be adjusted to make this more clear. She also clarified that the statements in red font that refer to replacement under the wetland & floodplain setback and road setback headings will be modified to read "replacement or relocation."

Ms. Haroldson asked when the 50% tracking time horizon would begin. Staff responded that tracking would begin upon the effective date of the ordinance amendments.

Ms. Barrows explained that recent legislation (Act 167) allows counties to limit replacement of boathouses to their existing three dimensional envelope. Finally, Ms. Barrows recommended

that all roofed areas be included in footprint calculations, with the exception of two-foot overhang areas. The committee agreed.

Ms. Barrows then described the additional “shoreline habitat” mitigation option language that was prepared in response to suggestions by Dr. Slawski at the prior meeting. Staff and the committee also discussed the side yard buffer expansion concept that had also been suggested by Dr. Slawski. Staff suggested that this option be limited to situations where there is protective environmental corridor zoning or a deed restriction in place to ensure habitat preservation on the respective adjacent lot. Ms. Barrows also described the proposed long term maintenance requirements for mitigation practices.

#### 4. Miscellaneous NR 115/Zoning Matters

Ms. Barrows and Mr. Fruth presented the “Miscellaneous NR 115/Zoning Summary Sheet” that was part of the meeting packet. They explained and summarized each of the ten NR 115 topics and fourteen miscellaneous zoning matters. The following is reflective of comments offered by the committee and details the SZAC’s recommended modifications or clarifications regarding specific matters. The committee concurred with the balance of the recommendations of the summary document.

- **Substandard Lots.** Ms. Scherer explained that it would be helpful if ordinance language could clarify the status of parts of lots (i.e. west one-half of Lot 7). Staff explained that lots that have been divided into “parts” prior to the effective date of the ordinance are considered legal lots of record. Staff noted that they will look for ways to make this clear in ordinance text.
- **Vegetative Cutting.** Mr. Day explained that rocky or other poor soil conditions can make planting of certain size caliper trees difficult, if not impossible. In response, Staff suggested that an exception or waiver mechanism would be written into the code whereby demonstration of limiting site conditions could be considered in authorizing smaller size replacement plantings.

The committee felt that the proposed priority tree preservation requirements should not extend to the full 1000’ shoreland jurisdictional area. The committee expressed a preference that the applicability extend no further than 300’ from the shore. Mr. Wilke inquired as to whether a few additional native species, such as Black Walnut, should also be included on the priority species list. Mr. Fruth noted that a few native species were intentionally omitted because some species may be considered by some to be undesirable for reasons such as soil toxicity.

- **Road Setback.** Mr. Herrmann suggested that road setback averaging be available to structures within 250’ of a proposed structure rather than 200’. He noted that this would provide consistency with the shore setback averaging provisions. The committee agreed with this suggested modification.
- **Habitation.** Mr. Fruth explained that Staff would like to have more dialogue with Corporation Counsel to ensure that the proposed definition is adequate, as this definition is important in ensuring that accessory structures are not illegally converted to dwelling units.

**5. SZAC wrap-up and next steps**

Mr. Fruth thanked the committee for their time and hard work on this project and stated that Staff felt the exchange of ideas that occurred during the process was extremely valuable and resulted in well vetted decisions. He thanked the committee for coming to meetings so well prepared. He also thanked Ms. Barrows for all of her efforts in preparing and presenting materials.

Mr. Fruth explained that the SZAC decisions would now be utilized to prepare draft ordinance text. He noted that draft text would be circulated to the SZAC, the DNR and all towns for review and that a public information open house will be held in advance of a public hearing.